

[Waiver 1996-10]

August 21, 1996

Ms. Joan Planell
Senior Legislative Analyst
Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Request for Advisory Opinion/Waiver

Dear Ms. Planell:

The Montgomery County Ethics Commission has considered your memorandum of May 7, 1996, wherein you ask for guidance regarding your husband's contractual work with County departments and agencies. You are governed by the County's ethics laws because you are a Senior Legislative Analyst with the Montgomery County Council. According to your memorandum, your principal responsibilities relate to the Department of Health and Human Services and the capital budget for the Montgomery County Public Schools. Your work involves analyzing budgets and programs and making recommendations for Council action.

Your request relates to the professional activities of your husband. He has been asked to provide mental health training and consultation for County agencies. More specifically, he has been asked to perform services for the Montgomery County Public Schools and for the Commission on Aging, which is an adjunct of the Department of Health and Human Services.

Section 19A-14(d) prohibits a public employee from hiring or advocating the advancement of a relative to a position that is under the jurisdiction or control of the public employee. Based upon the information provided in your memorandum, the Commission does not believe that Section 19A-14 is currently an issue in your case. You do not need a waiver of this section unless your husband will be employed under your jurisdiction or control.

Section 19A-11 of the Ethics Code addresses the participation of public employees in matters affecting a relative's business. The Commission has decided to waive this provision so that you may fully perform your responsibilities as a Legislative Analyst. The waiver is premised upon two conditions. First, you may not recommend your husband's services to any of the agencies with which you work. Second, you must disclose your husband's contracts to your superiors when you are reviewing budgets and programs of the agencies with which your husband is affiliated as a contractor. For example, you should not participate in the review of the Department of Health and Human Services budget documents without disclosing the facts relating to your

husband's relationship with the Commission on Aging or other agencies of the Department of Health and Human Services.

The Commission finds that the waiver requirements have been satisfied in this case. See Article 19A-8. The best interests of the County are served by granting the waiver. The waiver will allow you to perform your important functions as a Senior Legislative Analyst. The potential harm of any conflict is extremely small. The Commission's two conditions will further reduce the likelihood of any harm. Notably, your husband's contracts are relatively short-term and do not involve large sums of money. Therefore, his contracts are not likely to present significant budgetary or programming concerns for the Council. Therefore, the Commission finds that the importance to the County of your performing your official duties outweighs the potential harm of any conflict of interest. Finally, granting the waiver will not provide you with an unfair advantage over other members of the public. Because you will not be allowed to recommend your husband for employment, he presumably will be hired on his own merits.

I apologize for the Commission's slow response to your memorandum. If you have any questions, please do not hesitate to contact the Commission.

Very truly yours,
[signed]
Laurie B. Horvitz, Chair
Montgomery County Ethics Commission